

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MEYNARD DESIGNS, INC. AND EARTH,  
INC.

Plaintiffs and  
Counterclaim-Defendants,

v.

EARTH PRODUCTS INC.

Defendant and  
Counterclaim-Plaintiff.

EARTH PRODUCTS INC.

Third-Party Plaintiff and  
Counterclaim-Defendant,

v.

PLANET, INC.

Third-Party Defendant and  
Counterclaim-Plaintiff.

CIVIL ACTION NO. 05 cv 11781 NMG

**ASSENTED TO MOTION TO IMPOUND MATERIALS CITED  
IN EARTH PRODUCTS INC.'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT OF INVALIDITY OF UNITED STATES  
TRADEMARK REGISTRATIONS 2,249,826 AND 2,199,118, AND  
DESIGNATED UNDER THE PARTIES' STIPULATED PROTECTIVE ORDER**

Pursuant to District of Massachusetts Local Rule 7.2 and Section 8 of the parties' Stipulated Protective Order (Dkt. No. 30), Defendant Earth Products Inc. ("Earth Products") moves this Honorable Court for an Order impounding and sealing Defendant Earth Products Inc.'s Motion For Partial Summary Judgment Of Invalidity Of United States Trademark Registrations 2,249,826 And 2,199,118, And Memorandum In Support ("Motion for Partial Summary Judgment") and Exhibits D through F to the Declaration of Derrick Toddy ("Toddy

Decl.”) accompanying that Motion. These materials are not voluminous, comprising a brief of 17 pages and 24 pages of exhibits together totaling approximately 41 pages.

This motion is necessitated by the fact that Plaintiffs designated interrogatory responses and deposition testimony quoted and/or discussed in Earth Products’ Motion for Partial Summary Judgment as confidential under the Stipulated Protective Order and, despite Earth Products’ request, did not agree to de-designate such materials. Additionally, a transcript for the deposition of John Chopak, a former president of Plaintiff’s predecessor company, is automatically designated under the parties’ Stipulated Protective Order on an interim basis. Accordingly, Earth Products requests an order authorizing its Motion for Partial Summary Judgment and Exhibits D through F to the associated Toddy Declaration to be filed under seal and impounded.

The Clerk should impound these materials as described in Section 8 of the Stipulated Protective Order (Dkt. No. 30), *i.e.*, until 30 days after the conclusion of this case in this District Court.

Pursuant to Section 8 of the Stipulated Protective Order, Plaintiffs Meynard Designs, Inc. and Earth, Inc., and Third-Party Defendant Planet, Inc. (collectively, "Plaintiffs") have assented to this motion. Plaintiffs have not assented to the substance of Earth Products' related Motion for Partial Summary Judgment of Invalidity of United States Trademark Registrations 2,249,826 and 2,199,118, or to Earth Products’ filing such a motion at this time.

Dated: October 25, 2007

By: /s/ Derrick W. Toddy  
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**CERTIFICATE OF SERVICE**

I certify that this ASSENTED TO MOTION TO IMPOUND MATERIALS CITED IN EARTH PRODUCTS INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITY OF UNITED STATES TRADEMARK REGISTRATIONS 2,249,826 AND 2,199,118, AND DESIGNATED UNDER THE PARTIES' STIPULATED PROTECTIVE ORDER is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF).

Counsel for other parties are also being served by electronic mail on the date of electronic filing.

Dated: October 25, 2007

By: /s/ Derrick W. Toddy  
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